FACTS

During May, 1987, respondent represented Ms. Marylou Ramm as plaintiff in a personal injury action brought as a result of injuries she sustained in an automobile accident in 1984. She had discharged her former attorneys prior to retaining the respondent who was virtually on leave from his office due to his campaigning against David Dinkins for the Presidency of Manhattan. His office was monitored by another attorney who was in contact regularly with the respondent. Ms. Ramm testified at the New York disciplinary hearing that in 1984 she was involved in a car accident while stalled on the Long Island Expressway. Her five year old son was seated next to her. She was the operator. A car had cut her off which compelled her to jam on her brakes. Her car hydroplaned, spun around and came to a stop across the lanes of the highway facing the median. Her son, who was asleep, was slumped over in his seat. She attempted to reach him in order to reposition him but could not reach him because she was restrained by her shoulder-lap seat belt. (Respondent has since learned that is an impossibility in her Toyota or in any car before or since - because one can reach the floor of the passenger side since the belt is relaxed when the car is not running). She unfastened her seat belt and straightened her son. She attempted to move her car but her car had stalled. While again attempting to start her car and while cars were going

around her car, her car was struck by the defendant's vehicle. The car that cut her off fled the scene.

An important issue in the case was (1) the time of the interval between her car coming to a stop and (2) the time it was struck.

One year after the accident and before ever retaining the respondent Ms. Ramm had filed a Motor Vehicle report in which was a statement signed by her that her car stopped and stalled and "moments later" her car was struck. Prior to this testimony respondent went over parts of her likely testimony with her. Ms. Ramm was unsure of the exact time of the interval or its legal significance. Respondent explained to her that if only two or five seconds elapsed she would not prevail on her claim; if the interval was 20, 30 or 40 seconds or more, she would succeed, if she was believed. When Ms. Ramm pressed respondent as to how she should answer a question about the time interval, respondent told her to say, "Nothing but the truth." She eventually testified that the time interval was "about 30 seconds." Based on her testimony Ms. Ramm reached a substantial settlement in her favor in the personal injury matter.

Her testimony at the New York disciplinary hearing was that respondent told her to testify that the time interval was thirty seconds, even though she believed it to be only 10-12 to 15 seconds.

As entered into the record of respondent's disciplinary hearing by respondent, the conversation with Ms. Ramm went as follows: "I said, 'because Marylou (Ms. Ramm) this is the theory: If you were hit two seconds later, you lose, even though the guy is dead. If you were hit maybe ten seconds later, you might win. If you were hit 20 seconds later, you will probably win; 30 seconds later, forty-seconds later, the idea is how long you were there. That is what is important in your case and nobody can tell you that because you have to explain it and you are going to be asked that question sometime and then you might be asked sometime at trial after you testify here. What did you mean by the word, "moments" when you made that statement?

In the New York disciplinary proceeding respondent was found guilty of "instructing a client to give testimony that the attorney knew to be false". (He was also found guilty upon his own admission of keeping his escrow records negligently with no self-dealing and with no venality and with no harm to a client. (No one had complained but there was a random review of respondent's records.) After first disbarring the respondent, the court, upon reconsideration, but without regard to his age (70) in December 1993 suspended him for five years. California and Florida then filed reciprocal charges against him. California granted the respondent a de novo review, examined all the evidence and read the entire transcript and found insufficient evidence under California's standard of "clear and convincing" evidence. New York had employed its

standard of "preponderance of the evidence" and that is what this case focuses on. Does Florida apply its Rule 3.4-6 to respondent summarily or does it not? It should also be noted as of July 7, 1994 the California Supreme Court issued an Order affirming the Order of the State Bar Court of California and that court's findings and diciplined: dismissing the Ramm charge and ordering the respondent suspended on its guilty finding in the escrow charge for one year retroactive to January 13, 1994, the date of commencement of its hearing. There need not be any application for reinstatement but there shall be five years probation. Respondent, under California law, must take and pass the MPRE examination of August, 1994.

ISSUE

On February 14, 1994 the Hon. Herbert Moriarity, as Referee, reported to this court that he did not accept respondent's argument that Due Process was lacking in New York, but he does not know ("It is unclear") if Rule 3.4-6 should apply to the respondent. The respondent argues that he was denied Due Process in New York and also that the rule does not apply to him.

Rule 3.4-6, provides: A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying

disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule.

It is noteworthy that the Referee did not, as he stated, hear any witnesses, examine any evidence or read the New York transcripts but based his ruling solely on Rule 3.4-6. California did not rule on the constitutionality of the proceedings in New York, i.e. whether or not the New York standard of preponderance deprived the respondent of Due Process but did rule on the question of whether its reciprocal rule, which is basically identical to Rule 3.4-6, should apply to respondent. It ruled that its reciprocal rule did not apply to respondent, and then it found the respondent not guilty. (In line exactly with the holding and rationale of Jaskiewicz, infra.) As stated, California, as in Jaskiewicz, reviewed everything de novo after concluding that it could not, in good conscience, accept the proof in the New York judgment which was of the lesser exacting standard.

Here, the respondent presses the constitutionality as the premier question and also respectfully asks the court to rule as quickly as possible. Respondent is still unemployed, has been unable to find any employment, and has been reduced to penury. A late resolution will probably be not much practical help to respondent although its academic beacon will illuminate the entire profession - not only in Florida but for lawyers and judges across the entire United States.

(Since this review is not by a jury, I might suggest to each one of you judges (and I was a judge) to picture whether your life would be worth living if you were innocent, as I am, and you had a son still in college, and this happened to you.) I also ask this court to remove the restriction that I agreed to with the Florida Bar and which you approved of a month ago. That is: Since I was asking for a two month adjournment, I agreed to remove myself from active practice until the determination in this case. I ask the court to allow me back in active practice once the Bar submits its brief. You can now see my reason to agree: I did not yet have the "final adjudication" from California and I certainly believed that a sister state life California, with whom you have exchanged and copied many disciplinary and ethical formulas and rules, would be given greater respect by you that New York, which doesn't give a whit reciprocally about your holdings and your disciplinary impositions. It has repeatedly refused to admit or readmit applicants who have presented exemplary rehabilitation letters from Florida where they have been readmitted.

1) The standard of preponderance in New York disciplinary proceedings is a violation of the Due Process guarantees of the United States Constitution, and therefore, New York deprived respondent of Due Process.

2) Rule 3.4-6 does not apply to respondent under the principles of res judicata and collateral estoppel

and to apply it would violate the Equal Protection clause of the United States Constitution and the Interstate Commerce clause.

3) The procedure of New York proceedings violates the Due Process clause.

New York has ruled steadfastly and repeatedly, citing Matter of Capoccia, 15 N.Y. 2nd 549; 466 N.Y.S 2nd 269, (1983) that the standard in New York in disbarment proceedings is "preponderance of evidence." That court relied on Addington v. Texas, 441 U.S. 418, (1979).

Respondent submit that under Addington and under Mathews v. Eldridge, 424 U.S. 319, 335, (1976) and Santosky 455 U.S. 745, New York is clearly wrong and has deprived the respondent of Due Process under the Fifth and Fourteenth Amendments.

Santosky at 754 reiterates what Addington stated, namely that there are three factors that need to be balanced:

> The private interests affected by the proceeding: the risk of error created by the state's chosen procedure and the protection of the governmental or public interest.

Further in re Ruffalo, 390 U.S. 544 (1968) the court stated: Disbarment (even a two year suspension has been called

effective disbarment) is a 'punishment or penalty' imposed on the lawyer flowing from adversary proceedings of a quasi-criminal nature.

and Ruffalo went on:

"Disbarment is a deprivation 'more substantial than mere loss of money' carrying with it 'stigma' involving allegations of fraud or some other quasi-criminal wrongdoing." (Emphasis supplied). Other causes recite the importance attached to a lawyer's disciplinary proceedings and its nature.

In re Fisher, 179 F. 2nd 361; cert. denied 340 U.S. 825, the court quoted an Illinois court: The disbarment of an attorney is a destruction of his professional life, his character and his livelihood . . . Ruffalo also stated: "The gravity of the proceeding, namely, the quasi-criminal quality in such a proceeding and the punishment or penalty imposed on the lawyer requires a higher standard of proof"

There are many other cases in which the courts of this nation have labeled anything less than a clear and convincing standard in lawyer disciplinary proceedings a deprivation of Due Process.

The United States Constitution does not prescribe any standards of proof in any kind of case but the courts have established standards

of proof because certain kind of cases in order to meet the fairness principles of Due Process and the Anglo-American standard of fairness and substantial justice demand these standards. Addington, supra.

The crux of New York's decision in Capoccia was that Addington applies to a "liberty" interest. The argument is with the Capoccia court's conclusion that a lawyer's license to practice law is "like a property interest" and not a liberty interest and is a civil case subject to the "preponderance" standard. The loss of a livelihood with stigma attached has long ago been determined to be a liberty interest, Board of Regents v. Roth, 408 U.S. 564, (1972); Santosky v. Kramer, supra; Meyer v. Nebraska, 262 U.S. 390, 399; Lentsch v. Marshall, 741 F. 2nd 301 (10 Cir.) (1984). The New York court, in opposition to the great majority of states and federal courts is clearly wrong!*

In re Medrano, 956 F.2nd 101, 102, 1992 that court said:

> A disbarment proceeding is adversarial and quasi-criminal in nature and the moving party bears the burden of proving all elements of a violation.

In the Matter of Thalheim, 853 F.2nd 383, (5th Cir. 1988), the court stated:

> The notice of the allegations and the disbarment proceeding must satisfy the requirement of procedural Due Process.

*If Florida decides the practice of law is a liberty interest, all argument should cease at that point because undoubtedly New York's standard is unconstitutional.

And in Nasco, Inc. v. Calcasieu Television, 894 F. 2nd 696, (5th Cir.) (1990), the Court held:

> A federal court might disbar an attorney only upon presentation of clear and convincing evidence.

All these cases reflect that when one considers the risk of error and the respondent's interest (the respondent practiced well and with integrity for 5-1/2 years from the time of the complaint until its final adjudication) the state's interest pales.

It is obvious from the line of cases that cases of a certain nature require a higher standard of proof than "preponderance" and failure to apply that higher standard or greater, violates the Due Process clause of the Fifth and Fourteenth Amendments and the Anglo-American standard of fairness. The risk of error is so great that the respondent submits it outweighs the other two interests recited in Santosky. In addition, a minimum standard is a question of federal law because it involves the U.S. Constitution Due Process clause.

In Santosky, the court said:

> In any given proceeding the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the public and private interests but also a societal judgment about how the risk of error should be distributed between the litigant.

And later in Santosky:

> The minimum standard is a question of federal law which this Court may resolve retrospectively. Case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard, pp. 754-57. A preponderance standard does not fairly allocate the risk of an erroneous finding.

In parental rights termination proceedings [which the Santosky case dealt with] which bear "many of the indicia of a criminal trial," numerous factors combine to magnify the risk of erroneous fact-finding.

In re Medrano, 956 F. 2nd 101 (5th Cir.) 1992, the court stated:

> A disbarment proceeding is adversarial and quasi-criminal in nature. (pp.102) An attorney may be disbarred only on presentation of clear and convincing evidence.

And in Nasco, Inc. v. Calcasieu, supra:

> When it comes to determining what standard is proper, it is "the nature" of the proceeding which governs the standard to be employed.

It is submitted when one reads Medrano that a disbarment proceeding, considering its gravity, the loss of a livelihood, the stigma (private interests) and the governmental interest to protect the public puts a special focus on the risk of error. The respondent has been practicing without a complaint in the courts every day in a prolific practice in New York without incident. His life can be wiped out by the greater risk of error attendant to the

less exacting standard of "preponderance" and properly magnifies what 40 other states have done and 6 more states are on the road to doing, i.e., demanding "clear and convincing evidence" in such proceedings.

In Medrano, the court further stated that where the lesser standard is employed, the court must review the record de novo, Jaskiewicz v. Mossinghoff, 822 F. 2nd 1053, 1987 and apply the more exacting standard. California with the same standard as Florida's, did so in a final adjudication. Insofar as the classification of lawyer disbarment proceedings, we need not stop at Medrano or Jaskiewicz or California's decision but merely read the same case that New York relied on, namely, Addington, to see that New York is clearly wrong in deciding that the license is only a "property" interest. Further, Jaskiewicz, illustrates directly on point the correctness of respondent's argument in that Rule 3.4-6 cannot be applied to respondent even absent constitutional factors. Jaskiewicz stated flatly that "substantial evidence" is not the proper scope of review. Firstly, the court must determine if the standard applied was the standard that should apply. There the court stated that preponderance was not proper - it should have been clear and convincing evidence. It found that the evidence, in a de novo review did not meet that standard and dismissed.

On a de novo review under the Florida standard of proof this court will surely dismiss the Ramm charge.

To deprive a lawyer of his livelihood for five years (the

respondent here is near 71 years old) effectively disbars him, stigmatizes him and blots out his many years of a peerless reputation as a rabbi, teacher, lawyer and judge and has made his life probably not worth living. Compoundedly, the testimony against him was given by a party with an interest in winning a lawsuit which in her mind and in the mind of her live-in-lover, ex-husband, as corroborating witness, has been ruined by the respondent. It turned out, in fact, that the respondent successfully received a substantial settlement after her complaint was made.

Her testimony was vigorously denied by respondent, thus the pure question of credibility with the interest of the respondent weighed against the need to protect the public (the incident in 1987, the decision herein in 1993) being decided by a referee by a preponderance of evidence speaks for itself on the need to invoke the more exacting standard.

It is obvious that the risk of error in this case was overwhelmingly great. (The "proof is in the pudding" because the respondent <u>is</u> innocent!) It is no wonder that California summarily chose to reject New York's finding. California did not take New York's judgment lightly but iterated that in good conscience it could not accept the proof in the Ramm count. Almost all states, the federal courts and the ABA insist on the standard of "clear and convincing."

In New York, before the hearing an interrogation under oath was held of the complainant, the live-in-lover ex-husband and the

respondent each on separate occasions. The ex-husband was given the opportunity to read his ex-wife's testimony after driving her down to the hearing and after discussing it with her.

The respondent was never given the opportunity to read the transcript of their testimony until she and he testified at the hearing, thus he was surprised at her assertion that she had told him prior to the trial deposition that she had "reconstructed" the accident, as to what she did during the interval.

In New York, the respondent was not given the opportunity to depose the complainant and/or witness nor to attend their depositions, nor was he given notice of when they were to testify at what New York peculiarly calls not a deposition but a "Q and A" session.

> **Respondent submits this procedure in toto violates the Due Process clause of the Fifth and Fourteenth Amendments.** Netterville v. Mississippi, 347 So 2nd 878 p. 883.

Netterville is a case which involved only a private reprimand. However, that case held that lawyer disciplinary proceedings demand procedures of discovery (which are missing in New York) and thus it ruled Mississippi's procedure violative of Due Process. Further, that court found the standard of preponderance employed by the lower court, also violates Due Process. The Mississippi Bar conceded that the standard of proof should be higher than "preponderance" in temporary or permanent disbarment to pass constitutional muster, but that high court of Mississippi, as

stated above, wrote that even a reprimand is serious enough to demand the above measures in order to meet the requirements of Due Process and Anglo-American notions of fair play and substantial justice and insisted that Due Process also called for that higher standard." The "investigating hearing" [Q and A in New York] while not a 'full evidentiary' hearing must be expanded to permit the accused attorney the privilege . . .the right to cross-examine witnesses whose testimony is to be taken by complaints counsel - the transcripts in each instance to be included as part of complaints counsel report." This inquisitional method equalled only by secret grand jury testimony and exceeding the parameters of criminal hearings is what New York calls "like a civil case?"

New York, under its own holdings, saw no need to fall back on its civil cases' fraud standards because New York in disciplinary proceedings has held that only the "preponderance" standard is the standard to be applied. Moreover, even in civil cases New York has held that dishonesty, perjury, subornation, etc. are different than fraud and are therefore subject to the standard of civil cases, namely, "preponderance". Again, in disciplinary cases, the standard of proof is solely "preponderance".

The fact that 40 states have outrightly rejected the "preponderance" standard in lawyer disciplinary proceedings is of no small import. Of those, 3 have already modified their positions in suspension or disbarment proceedings while Netterville, supra, applies the more exacting standard even in the case of a private reprimand. Two or three others have not

tested the standard since the federal appeals court in their areas have ruled that the proceedings are quasi-criminal in nature and require the more exacting standard at the least. If one reads Rivera v. Minnich. 483 U.S. 579, 581 the impact of the majority of the states upon constitutional interpretation will be seen.

Now if this court is not convinced along with the 40 other states that Due Process is the underlying reason why all these states have invoked clear and convincing as the standard and why the federal courts have stated that Due Process calls for the "clear and convincing" standard in cases which involve liberty interests are correct, then I submit that the principles of res judicata and choice of law principles call for Florida to reject the proof in the New York judgment. As stated in "Conflicts in a Nutshell" by Siegel and by Hazard, "Law of Lawyering" and footnote 1 therein by Dean Brickman and Professor Bibona, Florida should not accept New York's finding. As they state on page 954, "In most jurisdictions the burden of proof in a civil action is by a preponderance of the evidence while that in disciplinary proceedings is by 'clear and convincing' evidence. "Under standard principles of res judicata a determination in one proceeding is not preclusive in a subsequent proceeding in which the standard of proof is more exacting."

Rule 8.4 (b) footnote 0.1, p. 954, 1992 supplement. See annexed exhibit.

In Res Judicata, the treatise by Casad, West Publishing, 1976, it is stated:

> The burden of proof difference operates as an exception to the rule of issue preclusion. Similarly, even though the burden of proof may be upon the same party in both actions, issue preclusion should not apply if the party against whom preclusion is sought had a significantly heavier burden in the first action, or if the party seeking to invoke preclusion had a significantly heavier burden in the second action.

The only argument that could possibly be raised by Florida is that it wishes to waive res judicata principles in its Rule 3.4-6. It is clear that Florida may not do so because then it would be in violation of the Equal Protection Clause of the United States Constitution and the Interstate Commerce Clause because the respondent is being found guilty in Florida only because he is also a New York lawyer as well as an active Florida lawyer, whereas a Florida lawyer committing the same act in Florida or New York, if the burden of the Bar could not be met in Florida, would be acquitted in Florida.

Michael Alan Schwartz, former General Counsel of the State Bar of Michigan submits an affidavit agreeing with my position. Exhibit annexed. Also, annexed hereto is the American Bar Association, Professional Discipline for Lawyers and Judges, Problems and Recommendations and Model Standards for Lawyer Disciplinary Enforcement which Michael Franck, former General Counsel for the State Bar of Michigan serving as chairman helped to author along

with Marcia Proctor now General Counsel for the State Bar of Michigan.

Respondent spoke to Marcia Proctor and she said that in all the discussions held, including those with the late Mr. Franck, the most serious discussion was about which standard should be the national standard of proof and finally, even Mr. Franck, who came from New York and who held out for preponderance, realized it would be unjust and capitulated to the rest, so that the standard of clear and convincing under Rule 8.40 was unanimously adopted. She stated further when I related Mr. Schwartz's affidavit, that all of the reciprocal rules that the ABA Rules were laid down under the panoply of the national standard of "clear and convincing" and she agreed with Mr. Schwartz.

You have a case coming before you where in the Court of Appeals in Florida, a Dr. Rife, who was found guilty of misconduct in Vermont under a standard of "preponderance" defends his Florida license by raising the res judicata principles argument because Florida has a "clear and convincing standard." The lower court held that there was "substantial evidence" in Vermont and, under scope of review principles, Florida revoked the doctor's license. That court, of course, erred because its first duty was to see what holding Florida's court would have made under its standard as the Jaskiewicz case clearly and emphatically points out in its reversal of the District Court, which used the "substantial evidence rule" in its scope of review.

It is, of course, from Model Standards for Lawyer Disciplinary Enforcement that the federal courts and Florida got their reciprocal rules and where Judge Moriarity extrapolated the "infirmity" consideration.

Rule 22D of the ABA Model Standards, subdivision 2 mentions the "infirmity of proof." There should be no doubt to this court that because of the constitutional transgressions above-mentioned New York's less exacting standard of preponderance is such an infirmity and it is the basis in alla the cases above-mentioned which turned away findings in cases of similarly serious nature based on "preponderance."

Respondent respectfully submits that Florida rejects the findings in respondent's New York judgment, dismissing the charges against the respondent or in the alternative ordering a hearing de novo on the merits.

Respondent should tell the court that since you are not a jury where such a statement would not be allowed, he is beyond a shadow of a doubt innocent of charge 1 and to allow his life to be confiscated by a complaint of a " Client from Hell" must be somehow rectified by this court.

As a former judge, we all know good cases make good law, bad cases make bad law. This is such a good case and respondent respectfully prays it should prevent this honorable court from making bad law. As Mr. Schwartz states. "It was <u>not</u> <u>contemplated</u>

that the principles of res judicata should be disregarded."

The question now is also: Do you go along with California which has gone along with Florida and vice versa and with the ABA and the great majority of states and federal courts which use the "clear and convincing standard" or are you going to succumb to New York's sense of individuality, although New York doesn't care a whit about the discipline that you impose on your own lawyers who are disbarred or suspended in New York and make application to be reinstated in New York based on their Florida reputations after Florida had reinstated them?

It might be argued by the Bar that these cases should tilt your decision in its favor: Eberhardt and Sanders and RLVH and Sickmen. (Unfortunately, your court erred in believing that Sickmen had not been already disbarred when Florida's proceedings had begun. In fact, Sickmen, under New York law, had already been disbarred the moment he was convicted, so that "one who is prohibited from practicing in his "home" state should not be allowed to practice in Florida recited in the Sanders case, is really dicta and is a direction but not a mandate.) It is apparent that the brush is painting too broadly in that statement because if that were to be taken literally, it would be needless to have Rule 3.4-6 at all nor would we have needed Florida Bd. of Examiners re Amendments to Rules of the Supreme Cort Relating to Admission to the Bar (April 25, 1991). (It is well settled law that such rules and standards may apply to admissions and reinstatements when the burden is on the applicant as opposed to

the issue herein.) Further, the use of the word "home" by the court is ill-advised and probably constitutionally infirm. Would it have been different in Sanders if the act and the finding of guilty was in the State of Kentucky and New York had disbarred him because of that act? Further, the distinction between "home" state and other jurisdiction where lawyers are licensed has long been removed by the United States Supreme Court insofar as eligibility to practice, except in constitutionally permissible circumstances.

Eberhardt:

Eberhardt was a Connecticut attorney who resigned under charges in Connecticut while facing disciplinary charges. In order to resign in Connecticut, he conceded his guilt ad took an oath never to reapply for reinstatement, therefore, his resignation is even worse than a disbarment. His argument was that he was never tried in Connecticut so that there was no "final adjudication." It is well-settled law that his circumstances equate with a hearing and finding of guilt. It is likewise clear that an attorney who does what Eberhardt did warrants disbarment in any state or federal court where he is admitted and so Florida was absolutely correct in disbarring him and its decision conforms with holdings in every state in the country.

Eberhardt further never raised the issue of constitutionality of the Vermont standard nor its lack of applicability. There is no doubt that if Eberhardt were tried and found guilty he would

surely be disbarred in Florida. Certainly, to resign in order to escape the inevitable proper discipline, is not only unacceptable but unjust.

Notwithstanding, even if you should pass such a Draconian rule as "prohibited elsewhere, is prohibited in Florida", before you could apply that rule you would have to deal with the very question raised in this case, namely:

(1) Is New York's standard unconstitutionally insufficient?
(2) Would that rule violate the principles of res judicata?
(3) Was the procedure in New York in toto unconstitutional?

For instance:

Would you prohibit someone because another state disbarred him or her or because he or she was too tall, or had red hair, or because she or he failed under a standard that was otherwise unconstitutional or both. The court must keep in mind that in Eberhardt the attorney was disbarred in Connecticut which has the same standard as Florida ("clear and convincing"). (Sickmen was different because this court erroneously believed that he was not yet disbarred because no proceedings had begun against him).

Sanders, was seeking re-instatement and so the burden that he had

to carry in order to prove his fitness was naturally different than this respondent's. This respondent has no burden to carry, only the Bar bears the burden and by clear and convincing evidence.

Respondent also implores this court for the reasons above-stated, if it chooses to impose a suspension on him for the escrow count violations, to impose no more than 29 days because if it imposes more than 30 days upon me, the respondent has to go through a readmission procedure which will allow a discontented Florida Bar to gain victory in this proceeding by indirection what it could not achieve directly.*

Respectfully submitted,

SEYMOUR FRIEDMAN

* The Appellate Division : Supreme Court of the State of New York First Department (New York and the Bronx) has now eliminated Letters of Caution or any reference to them in disciplinary proceedings or when imposing discipline. There is no longer such a thing as a Letter of Caution.

State of New York)

County of Queens)

Elaine Friedman, being duly sworn deposes and says:

She resides at 11015 - 71st Road, Forest Hills, New York 11375. That on August 6 1994 she served by Federal Express Mail a copy of this brief and accompanying exhibits, upon Ms. Alisa Smith, Assistant Bar Counsel, at Cypress Financial Center, 5900 N. Andrews Avenue, Suite 835, Fort Lauderdale, Florida 33309.

Elaine Friedman

Sworn to before me this

6 day of August, 1994

Marva D Earle-Jones

Notary Public

MARVA D. EARLE-JONES
NOTARY Public State of New York
Qualified Kings County
Comm. exp. Nov 6, 1995